

~~FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.~~

★ JUN 17 2008 ★
 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK BROOKLYN OFFICE

-----x
 ANDRES SOTO,

Plaintiff,

-against-

KRAFT FOODS GLOBAL, INC. and
 JOSEPH LAMBUSTA,

Defendants.

NOTICE OF REMOVAL

08 24 13

Civil Action No.

~~FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
 ★ MAY 14 2008
BROOKLYN OFFICE~~
KORMAN, J.
POLLAK, M.J.

The petition of defendant Kraft Foods Global, Inc. ("Petitioner," "Kraft") respectfully shows:

1. On or about January 7, 2008, Petitioner received by mail a copy of a Summons and Complaint in this action, pending in the Supreme Court, Kings County. Copies of those papers are annexed hereto as Exhibit A.
2. On or after April 14, 2008, Petitioner by counsel received a copy of the Ad Damnum in this case establishing for the first time that the amount in controversy is in excess of \$75,000, viz., \$1,000,000. The Ad Damnum is attached as Exhibit B.
3. This Notice of Removal is being filed within 30 days after receipt by petitioners of a copy of a paper that establishes diversity jurisdiction, and is timely filed under 28 U.S.C. § 1446 (b).
4. Petitioner's time to Answer or move with respect to the Complaint has not expired.

5. Upon information and belief, plaintiff is a resident of the State of Pennsylvania, residing at 577 North Locust Street, Hazelton, Pennsylvania.
6. Petitioner Kraft is a corporation organized and existing under the laws of the State of Virginia, with its principal place of business at Three Lakes Drive, Northfield, Illinois.
7. Upon information and belief, defendant Lambusta is a resident of the State of New Jersey, residing at 71 Kettle Creek Drive, Brick, New Jersey.
8. This action is a civil action in which plaintiff purports to allege personal injuries arising out of an automobile accident and seeks damages for such alleged injuries and alleged lost earnings and medical expenses.
9. The matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs.
10. This action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, and this action may be removed to this Court by petitioners, pursuant to the provisions of 28 U.S.C. § 1441(a).

WHEREFORE, petitioner Kraft respectfully requests that this action be removed to this Court.

Dated: New York, New York
May 6, 2008

Janice Roven
Janice Roven, Esq.
LAW OFFICE OF JANICE ROVEN
60 East 42nd Street, Suite 1411
New York, New York 10165
(212) 262-3280

EXHIBIT “A”

Plaintiff, Plaintiff's Attorney, Plaintiff's Counsel, Plaintiff's Lawyer,

Defendant, Defendant's Attorney,

Defendant's Attorney, Defendant's Counsel, Defendant's Lawyer,

Plaintiff's Lawyer,

Plaintiff's Attorney,

KRAFT FOODS GLOBAL, INC. and
JOSEPH LAMBUSTA,

Defendants.

Place of service is placed at:
Or by personal delivery,
Email or fax or other
method inside the
State of New York
New York.

Plaintiff resides at 575 North
Lexington Street, Brooklyn, NY

X SUMMONS

To the above named defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service, (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York), and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
December 6, 2007

SARAH J. TURIBES, ESQ.

Attorneys for Plaintiff

BILL FORGE W. MBERT
475 Park Avenue South
New York, New York 10016
(212) 687-7411

Defendants' Addresses:

Kraft Foods Global, Inc.
c/o CT Corporation System
111 Eighth Avenue
New York, New York 10011

Joseph Lambusta
71 Kettle Creek Drive
Brick, New Jersey 08723-6650

Plaintiff, ROBERT J. LAMBIESTA, on behalf of himself and all others similarly situated, hereby sues defendant KRAFT FOODS GLOBAL, INC., and JOSEPH LAMBIESTA, and hereby demands judgment against them.

VERIFICATION AND AFFIRMATION

Plaintiff,

(Signature)

KRAFT FOODS GLOBAL, INC. and
JOSEPH LAMBIESTA

Defendants

(Signature) (Signature) (Signature) (Signature)

Plaintiff by his attorney, SAMUEL J. LURIE, respectfully alleges, upon information and belief:

1. On November 24, 2007, Utica Avenue and Lincoln Place were public highways in the County of Kings, City and State of New York.
2. At all the times mentioned herein, defendant, Kraft Foods Global, Inc. ("Kraft") was a foreign corporation organized and existing under the laws of the State of Delaware.
3. At all the times mentioned herein, defendant Kraft was authorized to do business in the State of New York.
4. At all the times mentioned herein, defendant Kraft regularly did business in the State of New York.
5. Defendant Kraft then owned a motor vehicle bearing plate number PNE 2611, Ohio.
6. Defendant Joseph Lambiesta ("Lambiesta") then operated said motor vehicle.
7. Defendant Lambiesta then operated said motor vehicle with the consent of defendant Kraft.
8. Defendant Lambiesta then owned a motor vehicle bearing plate number PCE 3694, Ohio.

Complaint for personal injury at law:

For damages and/or its discretion, determining plaintiff's claim against defendants, et al., and

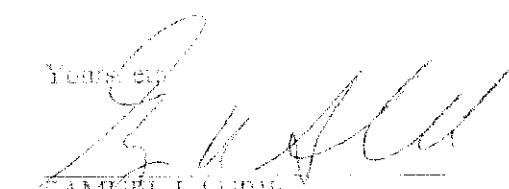
11 Plaintiff, Andrew Socio, sustained a serious injury as defined in Sec. 51(2)(d) of the
Insurance Law, in said accident.

12. Soberly as a result of defendants' negligence, plaintiff was personally injured, lost
earnings and incurred medical expenses.

WHEREFORE, plaintiff demands judgment against defendants for personal injury
for a sum of money to reasonably and fairly compensate him for the damages sustained,
together with the costs and disbursements of this action.

Dated: New York, New York
December 6, 2007

Yours etc,


SAMUEL J. LURIE
Attorney for Plaintiff
BY: GEORGE W. ILCHERT
475 Park Avenue South
New York, New York 10016
(212) 685-7411

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
New York, New York

6/17/08 10:00 AM

Plaintiff:

Samuel J.

KRAUT, SOHN, HANAU, LINDNER & KRAMER, PLAINF

Defendant:

SUMMONS AND VERIFIED COMPLAINT

SAMUEL J. LUCIC

Attorney for Plaintiff(s)

CITCO and P. O. Ad Loco

475 Park Avenue South - Room 2800

New York, New York 10016

(212) 685-7431

PLEASE TAKE NOTICE:

Notice of Filing

that the within is a true copy of an Order duly entered in the Office of the Clerk of the Court named Court on

Notice of Settlement

that an Order of which the within is a true copy will be presented for settlement to

HON. _____ one of the Judges of the within named Court, at

on _____ at 10:00 a.m.

Dated

Yours, etc.

Samuel J. Lucic

Attorney for Plaintiff

475 Park Avenue South - Room 2800

New York, New York 10016

(212) 685-7431

RECEIVED - CLERK'S OFFICE

GEORGE WILCHERT, Esq., the petitioner, from the New York Department of Health, affirms that he is accountable under the circumstances, the procurement of these papers used in contentious action are not privileged or confidential, that he is not the filing Administrator and that this matter was not obtained through illegal conduct and the matter was not obtained in violation of 22 NYCRR 120.04(1)(a)(DR-11).

Dated: December 6, 2007



SAMUEL J. LURK
Attorney for Plaintiff
BY: GEORGE W. WILCHERT

DEFENDANT'S JOINT MOTION FOR ATTACHED COPY OF PLEADING

Defendant, by his attorney, respectfully moves the court to attach the following:

Plaintiff's complaint, and all exhibits thereto, and all documents, papers, correspondence, and other materials which may be attached thereto, and all other documents, papers, correspondence, and other materials which may be filed or filed and served in this case, including, but not limited to, motions, memoranda, briefs, and all facts, reports, statements, documents, data, etc., to be filed pertaining to this matter.

The reason for this motion is that plaintiff is presently not in the County where defendant maintains his practice.

Upon notice, defendant will file a copy of the above documents with the Clerk of Court.

Date: June 17, 2008

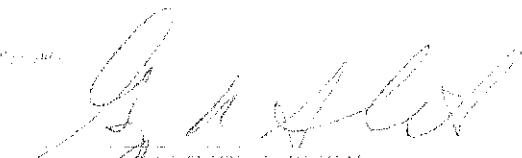

SAMUEL J. EHRLE
BY GEORGE W. LOHERT

EXHIBIT “B”

SUPREME COURT OF THE STATE OF NEW YORK
COUNY OF KINGS

-----X
ANDRES SOTO,

Index No.: 45365/01

Plaintiff,

-against-

VERIFIED
ANSWER

KRAFT FOODS GLOBAL, INC., and
JOSEPH LAMBUSTA

Defendant.

-----X

Defendant, KRAFT FOODS GLOBAL, INC., by their attorneys, LAW OFFFICE OF
JANICE G. ROVEN, hereby answer the plaintiff's Verified Complaint as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraphs numbered 1, 6, 9 and 11 of the Verified Complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraphs numbered 2, 3, 4 and 7 of the Verified Complaint and refers
all questions of law to this Honorable Court and questions of fact to the jury.

THIRD: Denies each and every allegation contained in paragraphs numbered 5, 8,
10 and 12 of the Verified Complaint.

**AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES**

FOURTH: Upon information and belief that whatever damages the plaintiff may have
sustained at the time and place mentioned in the Verified Complaint were caused in whole or in
part by the culpable conduct of the said plaintiff. The amount of damages recovered, if any, shall
therefore be diminished in the proportion to which said culpable conduct, attributable to plaintiff,
bears to the culpable conduct which caused said injuries.

**AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:**

FIFTH: Upon information and belief, that the injuries and damages alleged were caused by the culpable conduct of some third person or person over whom answering defendant neither had nor exercised control.

**AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES**

SIXTH: In the event Plaintiff recovers a verdict or judgment against the answering Defendant, then said verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify Plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source.

**AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:**

SEVENTH: Upon information and belief this Court has not acquired in personam jurisdiction over answering defendant.

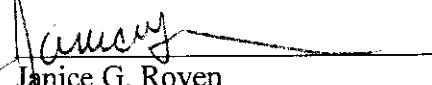
**AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES**

EIGHTH: Upon information and belief this Court has not acquired subject matter jurisdiction over this matter.

WHEREFORE, the defendant, KRAFT FOODS GLOBAL, INC., hereby demands judgment dismissing the Verified Complaint together with all costs.

Dated: New York, New York
February 11, 2008

Yours etc.,


Janice G. Roven

The Law Office of Janice G. Roven
Attorneys for Defendants
KRAFT FOODS GLOBAL, INC.,
60 East 42nd Street, Suite 1411
New York, New York 10165
(212) 262-3280

To:

Samuel J. Lurie
Attorney for Plaintiff
475 Park Avenue South
New York, New York 10016
(212) 685-7411

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ANDRES SOTO,

Index No.: 45365/01

Plaintiff,
-against-

VERIFICATION

KRAFT FOODS GLOBAL, INC., and
JOSEPH LAMBUSTA

Defendant.

-----X

Janice G. Roven, Esq. being sworn deposes and says that she is a member of the Law Firm of Janice G. Roven and that she has read the contents of the foregoing and that it is true of her own knowledge, except as to the matters herein stated to be alleged on information and belief and that as to those matters deponent believes to be true.

() That deponent makes this verification because the defendant resides outside of the county where deponent maintains her office.

() That deponent makes this verification because defendant is a corporation and deponent is its attorney and deponent's knowledge is based upon all facts and corporation records available and in deponent's possession.

(X) That deponent makes this verification because the Defendant maintains an office outside the county wherein deponent maintains her office.

Dated: New York, New York
February 11, 2008

Janice G. Roven

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

I, Ananka Medrano being duly sworn, depose and says :

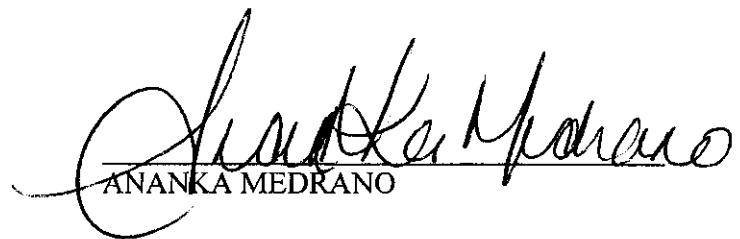
That I am over eighteen years of age and reside in New York, New York.

That I am not a party to the action.

That on **February 14, 2008** I personally served the within **Verified Answer** upon the following person(s):

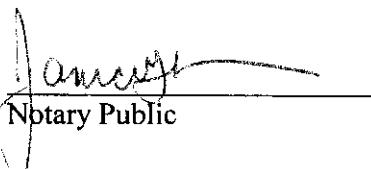
Samuel J. Lurie
Attorney for Plaintiff
475 Park Avenue South
New York, New York 10016

by personally depositing the aforementioned in a post paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



ANANKA MEDRANO

Sworn to Before Me on this
14 day of February, 2008.


Notary Public

NOTARY PUBLIC
STATE OF NEW YORK
APPROVED BY THE ATTORNEY GENERAL
REGISTRATION NUMBER: 00000000000000000000
EXPIRATION DATE: 02/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNY OF KINGS

-----X
ANDRES SOTO,

Index No.: 45365/01

Plaintiff,
-against-

VERIFIED
ANSWER

KRAFT FOODS GLOBAL, INC., and
JOSEPH LAMBUSTA

Defendant.

-----X

Defendant, JOSEPH LAMBUSTA by their attorneys, LAW OFFFICE OF JANICE G.
ROVEN, hereby answer the plaintiff's Verified Complaint as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraphs numbered 1, 2, 3, 4, 5, 9 and 11 of the Verified Complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraphs numbered 7 of the Verified Complaint and refers all
questions of law to this Honorable Court and questions of fact to the jury.

THIRD: Denies each and every allegation contained in paragraphs numbered 8, 10
and 12 of the Verified Complaint.

**AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES**

FOURTH: Upon information and belief that whatever damages the plaintiff may have
sustained at the time and place mentioned in the Verified Complaint were caused in whole or in
part by the culpable conduct of the said plaintiff. The amount of damages recovered, if any, shall
therefore be diminished in the proportion to which said culpable conduct, attributable to plaintiff,
bears to the culpable conduct which caused said injuries.

**AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:**

FIFTH: Upon information and belief, that the injuries and damages alleged were caused by the culpable conduct of some third person or person over whom answering defendant neither had nor exercised control.

**AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES**

SIXTH: In the event Plaintiff recovers a verdict or judgment against the answering Defendant, then said verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify Plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source.

**AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:**

SEVENTH: Upon information and belief this Court has not acquired in personam jurisdiction over answering defendant.

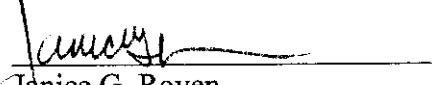
**AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES**

EIGHTH: Upon information and belief this Court has not acquired subject matter jurisdiction over this matter.

WHEREFORE, the defendant JOSEPH LAMBUSTA hereby demand judgment dismissing the Verified Complaint together with all costs.

Dated: New York, New York
February 11, 2008

Yours etc.,


Janice G. Roven

The Law Office of Janice G. Roven

Attorneys for Defendant

JOSEPH LAMBUSTA

60 East 42nd Street, Suite 1411

New York, New York 10165

(212) 262-3280

To:

Samuel J. Lurie
Attorney for Plaintiff
475 Park Avenue South
New York, New York 10016
(212) 685-7411

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ANDRES SOTO,

Index No.: 45365/01

Plaintiff,
-against-

VERIFICATION

KRAFT FOODS GLOBAL, INC., and
JOSEPH LAMBUSTA

Defendant.

-----X

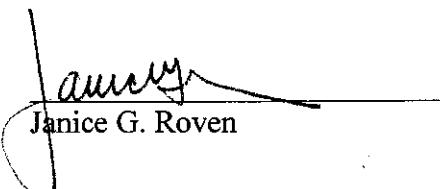
Janice G. Roven, Esq. being sworn deposes and says that she is a member of the Law Firm of Janice G. Roven and that she has read the contents of the foregoing and that it is true of her own knowledge, except as to the matters herein stated to be alleged on information and belief and that as to those matters deponent believes to be true.

() That deponent makes this verification because the defendant resides outside of the county where deponent maintains her office.

() That deponent makes this verification because defendant is a corporation and deponent is its attorney and deponent's knowledge is based upon all facts and corporation records available and in deponent's possession.

(X) That deponent makes this verification because the Defendant maintains an office outside the county wherein deponent maintains her office.

Dated: New York, New York
February 11, 2008


Janice G. Roven

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) s.s.:
)

I, Ananka Medrano being duly sworn, depose and says :

That I am over eighteen years of age and reside in New York, New York.

That I am not a party to the action.

That on **February 14, 2008** I personally served the within **Verified Answer** upon the following person(s):

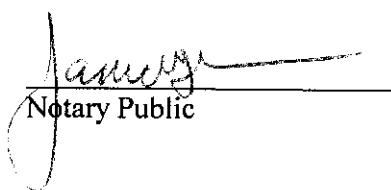
Samuel J. Lurie
Attorney for Plaintiff
475 Park Avenue South
New York, New York 10016

by personally depositing the aforementioned in a post paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



ANANKA MEDRANO

Sworn to Before Me on this
14th day of February, 2008.



James
Notary Public

